IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R. RAMAN

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

CRP. No. 2632 of 2000(E)

SM.167/1977 of TALUK LAND BOARD, THIRURANGADI.
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REVN. PETITIONER:

PERINCHERRY MATTIL PATHUTTY HAJJUMMA,
W/O. LATE KONARI MOHAMMED @ BAVA HAJI,
RESIDING IN ARIYALLUR AMSOM, KODAKKAD DESOM,
POST KODAKKAD, MALAPPURAM DISTRICT.

BY ADV. SRI.A.P.CHANDRASEKHARAN
SMT.PRABHA R.MENON
SRI.PUSHPARAJAN KODOTH
SRI.M.KRISHNAKUMAR (MOHANKUMAR ASSOCIATES)
SRI.K.JAYESH MOHANKUMAR

RESPONDENTS:
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1. THE TALUK LAND BOARD, TIRURANGADI.

2. THE TAHSILDAR, TIRURANGADI.

3. THE DISTRICT COLLECTOR

BY GOVERNMENT PLEADER SRI. V.T.K. MOHANAN.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRP. No. 2632/2000(E)

Order on C.M.P. No. 5307/2000 in C.R.P. No. 2632/2000

Dismissed.

19.10.2007 **P.R. RAMAN, JUDGE.**

// True Copy //

P.A. to Judge.

jg

P.R.RAMAN, J.

C.R.P. No. 2632 of 2000

Dated, this the 19th day of October, 2007

O R D E R

The petitioner herein is the wife of Konari Mohammed @ Bava Haji, who died on 01/01/1976 without filing any return under the Kearla Land Reforms Act in respect of the land held by him as on 01/01/1970. The Taluk Land Board initiated suo motu proceedings against the petitioner being the wife of the deceased Shri.Bava Haji. This was challenged before this Court in CRP 718/94 and this Court set aside the proceedings taking the view that suo motu proceedings cannot be initiated against the legal representative. But that was over ruled by the apex court in further appeal. However, since an opportunity of being heard is not given to the petitioner, the Taluk Land Board issued fresh draft statement and called upon the petitioner herein to file the objections, if any.

2. As per the draft statement, an extent of 9.93.75 acres is directed to be surrendered. The petitioner contested the matter urging various contentions. Some of the contentions were accepted, some were rejected. Ultimately, by the impugned order, an extent of 9.10¾ cents of land are directed to be surrendered as

excess land. Challenging the said order, the present revision is filed. The revision is confined to the claims which were rejected by the Land Board.

3. The first contention advanced on behalf of the revision petitioner is that an extent of 40 ½ cents in R.S.No.83/3, which was a subject matter of the gift as per Gift Deed No. 2140/72 was subsequently acquired for a project by the State and are liable to be excluded. Based on the report of the Authorized Officer, Land Board held that since the acquisition was in 1983, and compensation was obtained and since land was in possession as on 01/01/1976, claim was rejected. The relevant date is 01/01/1970 for the purpose of the total extent of the land to be held by the account holder. Since this is the land already gifted in favour of the son, this is a valid gift as per Section 84(IA) of the Kerala Land Reforms Act as introduced by Act 29 of 1979. The fact that the compensation was received by the Donee under the gift also shows that this land was acquired in the hands of the Donee. Since the transfer is valid, the entire extent of 40 ½ cents are liable to be excluded from the account of the petitioner. Accordingly, this point

is answered in favour of the petitioner.

4. The next contention is that an extent of 3.46 acres of land in R.S.No. 136/2 was entrusted to Smt. Ummu alias Ummayya, daughter of the sister of the assessee as per a Will dated 25/10/1974 and is liable to be deleted. The Land Board rejected the contention holding that the 'Will' will not come under the purview of Section 84 of the Kerala Land Reforms Act and the transfer of the land as per the Will is invalid. As far as the Will is concerned, the same will take place only on the death of the testator. Even on the date on which the proceedings were initiated, the testator was alive. Hence the will has not come into operation. So the entire land is liable to be included in the account of the petitioner. The contention of the assessee is without any merit hence upheld.

5. An extent of two acres of land which is said to be comprised in R.S. No. 136/3 with residential house and allied structures was sought to be exempted. A total extent of 1.50 acres of garden land was already been allowed for the convenient enjoyment of the family and domestic animals. The contention that

the balance extent of 50 cents should also be allowed by way of exemption, does not merit consideration, as the matter has been considered in the light of the report of the Authorized Officer. It is purely a fact finding as to what extent is required for the convenient enjoyment of the house, no interference is called for.

6. An extent of 4.52 acres of land comprised in various survey numbers as per Gift Deed No. 2140/72 dated 15/12/72 (annexure A5 produced before the authority) is liable to be exempted as the valid gift in favour of the son of the account holder. The Land Board considered this objection and found that an extent of 4.02 acres is liable to be deleted from the account of the assessee. Out of the balance extent, the reason given for not accepting the claim is as follows :- In R.S.83/3, the extent of land accounted is only 80 cents of which 30 cents have already been exempted for shop building and road as per the order dated 27/01/84. Therefore, the balance to be accounted against the gift deed is only 50 cents since 30 cents is already exempted on one count as noticed above. 0.28 acres in 171/4 has not been considered for deletion as no claim over it. So also, out of 70 cents

in 144/1, 3 cents were exempted for road earlier as per earlier order and deduction of the extent available for gift is only 67 cents in R.S. 144/1. According to the petitioner, the rejection of the claim in respect of 0.28 acres is not correct. According to him, the gift deed produced as annexure A5 before the authority would show that this extent is also included. On verifying the original gift deed, which is produced as annexure A5, it is seen that the document No. 2140/72 is executed on 14/12/1972. It is a registered document. From the schedule attached to this deed both survey nos. 144/4 and 171/3 are included and as against the survey No. 171/4, an extent of 28 cents is also included in the gift deed. It appears that the total extent covered by 171/3 and 171/4 are described as one item. Therefore, this 28 cents of land in 171/4 is liable to be excluded from the account of the declarant.

7. An extent of 3.36 acres in R.S. No. 170 and 2.28 acres in 171/4, the contention was that, the actual extent in possession of the family in 170 & 171/4 is only 2.29 and 1.07 acres respectively and the excess extent is to be deleted. It is also contented that there are Kudikidappus in R.S.170 & 174 and also a temple and

Kavu in R.S. 170 and 70 cents are to be exempted for kudikidappus and temple. Further contended that 25 cents are to be exempted being eroded by Kadalundi river. The Taluk Land Board considered the earlier order dated 27/01/84, the document produced and the report of the Authorised Officer and the objections were discussed, and an extent of 2.29 acres in R.S. 170 and 1.07 acres in R.S. 171/4 were adopted as the extent held by the assessee and it was accordingly decided to delete the above extent. An extent of 3.36 acres from the account of the assessee being the land gifted to his major son Kunhavaran. Some mistakes were stated to have been made while arriving at the decision. It was found that as per paragraph 4 of the same order, another extent of 4.11 acres in R.S. 83/4, 5, 144/2B, 1 and 171/3 were already deleted being gifted to the same son Kunhavaran. Then the total extent deleted will come to 7.47 acres. The total extent deleted as such is not liable to be treated as valid as per Section 84 of the Kerala Land Reforms Act. What is allowable is only a maximum of 5 standard acres, so however, that the ceiling area shall not be less than six and more than seven and a half acres. Because of the discrepancy as noticed

above, after reconsideration of the matter, it was held that the assessee would be entitled for exclusion of 6.26 acres in extent and the balance of 1.21 standard acres in extent was added to the account of the assessee. The contention of the petitioner is that the maximum extent i.e. allowable being 7 ½ acres, the entire acres are liable to be excluded. This contention is misconceived. As per Section 84 of the Kerala Land Reforms Act, gift to an extent of 5 standard acres is treated as valid. So however, while calculating the actual extent, it should not be less than six acres and more than 7 ½ acres. Thus, if five standard acres corresponds to less than six acres, the total extent up to six acres will be exempted, i.e. the minimum extent to be allowed. If five standard acres corresponds to less than 7 acres, then extent over 6 acres is not liable to be exempted. A maximum of 7 ½ acres will be allowed, only if 5 standard acres is equivalent to 7 ½ acres in extent or more. Therefore, what has been treated as valid is strictly in accordance with the provisions contained in Section 84 and does not call for any interference.

8. The next claim is in respect of an extent of 0.65 acres in

R.S. 487/4, 0.99 in R.S. 514/5 and 2.60 in R.S. No. 124/3,4. These lands are claimed to have been gifted to Pathutty Umma, adopted daughter of the petitioner as per gift deed No. 43/73. The petitioner however, was not able to prove that there was any valid adoption of Pathutty Umma by the petitioner. No materials are also placed to show that there is any valid adoption of Pathutty Umma as the daughter of the petitioner. In the absence, the findings cannot be interfered with.

9. The Lands in R.S. 498/9, 10, 455/2, 491/14 are stated to be the land already gifted to the sister's daughter Ummayya Umma and possessed by her since 15/9/67 and subsequently registered as per deed No. 412/70 and the lands are to be exempted from the account of the assessee. As per Section 84, transfers after 1964 in favour of a person who was a tenant of the land holding before July 1960 are invalid by virtue of Sub Section (1) of Section 84. As per Sub section (1A) of Section 84, a gift in between 01/01/70 and ending with the 5th day of November 1974 in favour of his son or daughter or son or daughter of his predeceased son or daughter alone are validated, provided, it is

within the extent of the ceiling area applicable to the Donee. In this case, admittedly, the donee is not a person satisfying any of the descriptions referred to in sub section (1A) of Section 84. As such, the claim does not merit consideration.

10. The extent of 0.67 cents in R.S. 493/1 is stated to be the land in possession of one Kottadan Mohammed, Koniyath Saidutty and Kunhipocker as per document No. 414/70 and contended that the same is liable to be deleted from the account of the assessee. The assessee, however, did not produce any document as such to prove his claim. Further, transaction was made after 01/01/70, hence the Land Board rejected this claim. The contention that this transaction is after 01/01/1970 and therefore it became invalid however requires reconsideration in the light of newly added provision, Section 84(1A). The petitioner be given an opportunity to produce the document at the time of reconsideration of the matter. Thus this point shall be reconsidered by the Taluk Land Board.

11. The land in R.S. 540/3, 164/2, 297/7 and 321/1 are claimed to be valid transfers. The land in R.S. 540/3 was

transferred to Thithikutty Umma as per document No. 1532/65. The land in R.S. No. 321/1 was transferred to tenant Valiyaparambil Imbichi Koya in 1972. The land in R.S. 164/2 was transferred to Thattamkandi Appu as per document No. 1376/56. It is contented that the correct survey No. of the land is 297/7 and 296/7 and these lands are wakafed as per document Nos. 473 and 474 of 1967, 540/3 and 321/3 are also contended to be SC wet and not garden as assessed. The Land Board found that the lands were reclassified as S.C wet lands and deducted 1.49 ½ standard acres from the account of the assessee. The land in R.S. 296/7 was also deleted. Regarding the transfer of land in R.S. Nos. 540/3 and 321/1, claim was rejected, since the assessee did not produce the document to prove the transfer as valid. Since the petitioner referred to the registered documents and given its numbers and since the matter is remanded for the limited purpose of considering certain points, this aspect shall also be re-considered by the Land Board after giving an opportunity to the petitioner to produce documents and shall consider the claim based on the amended provisions, if it applies.

12. In the result, an extent of 40 ½ cents in R.S. 83/3, 28 cents in R.S. 171/4 stands excluded. Balance extent to be surrendered will be re-determined after considering the points, for which the case is remanded to the Taluk Land Board.

A copy of the order along with lower court records will be forwarded to the Taluk Land Board without delay.

(P.R.RAMAN, JUDGE.)

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